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COMMISSION

2500
Brown & Williamson
Tower
Louisville Kentucky
40202

502 584 1135

502.561 0442 fax

www.midtreut.com

Douglas F. Brent

Direct dial: 502-625-2771

dbrent@midtreut.com

Mr. Thomas M. Dorman
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40601

**RE: Case No., 2002-456, Inquiry into use of Contract
Service Arrangements by Telecommunications
Carriers**

Dear Mr. Dorman:

Enclosed please find the original and ten copies of
MCI Telecommunications and MCIMetro Access Transmission
Services, LLC's Opposition to Cincinnati Bell's Motion to
Compel. Please indicate receipt of this filing by your
office by placing a file stamp on the extra copy and
returning to me via the enclosed, self-addressed, stamped
envelope.

Sincerely Yours,

Douglas F. Brent
Counsel to MCI Telecommunications and
MCIMetro Access Transmission Services, LLC

DFB:jms

Enc.

Cc: Parties of Record

COMMONWEALTH OF KENTUCKY

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BEFORE THE PUBLIC SERVICE COMMISSION JUN 11 2003

PUBLIC SERVICE
COMMISSION

In the Matter of

INQUIRY INTO THE USE OF)	
CONTRACT SERVICE ARRANGEMENTS)	
BY TELECOMMUNICATIONS)	CASE NO. 2002-00456
CARRIERS IN KENTUCKY)	

OPPOSITION TO CINCINNATI BELL'S MOTION TO COMPEL

MCI Telecommunications ("MCIT") and MCImetro Access Transmission Services, LLC ("MCIm") (collectively, "Respondents"), by counsel, hereby respond¹ to and oppose Cincinnati Bell Telephone Company's ("CBT") motion to compel responses to CBT's data requests. Respondents also oppose CBT's "alternative" application for subpoenas requiring document production and appearances at the June 17 hearing. There are three reasons the motion must be denied. First, Respondents are non-parties and CBT's request to compel testimony would be improper even if sent to a party. Second, CBT's application and motion are untimely. Third, CBT's justification for its requests is contradicted by its earlier conduct related to its Broadwing affiliate.

¹ In filing this opposition to CBT's motion to compel and alternative application for subpoena, Respondents' appearance is not a waiver of any

I. RESPONDENTS ARE NON-PARTIES AND ARE NOT REQUIRED TO ANSWER CBT'S REQUESTS.

This rulemaking appears related primarily to concerns about whether prior relaxation of regulations governing BellSouth, e.g., Case No. 2001-00077, has led to instances of unreasonable price discrimination. In opening the instant case last year the Commission expressed concern that perhaps it had gone too far in granting certain regulatory flexibility to BellSouth and to other ILECs.²

The initial order named all ILECs and various competitive carriers, including MCIm, as respondents. The list of respondents was identified as Appendix A to the initial order. MCIm and its affiliate Intermedia Communications, Inc. were included in Appendix A. Accordingly, they responded to the Commission's initial data request on March 25. This response was mailed to CBT. MCIm stated it had used no CSAs in Kentucky during 2001 or 2002 and further explained that since its operations in Kentucky were *de minimus*, it wished to be excused from participation and relieved of any obligation to respond to data requests.

argument that they are non-parties not subject to any obligation to participate in this case.

² "It is perhaps inevitable that we now find it necessary to determine whether some of our decisions relaxing the regulatory regime pursuant to KRS 278.512 may inadvertently have created problems." Case No. 2002-00456, December 19, 2002 Order at p. 2. The specific examples of prior decisions contained in the December order all relate to conduct and practices of BellSouth.

In contrast, MCIT was never a party to the case. The Commission excluded MCIT and several other carriers from its list of respondents. The order stated non-respondents could request to participate by sending a letter to the Commission. MCIT did not elect to participate.

CBT's subpoena request would not be appropriate even if Respondents were parties to the proceeding. Attachment A to CBT's May 29 application is in actuality a set of interrogatories, or an attempt to depose by interrogatory. This is tantamount to improper discovery. The Commission does not permit interrogatories and depositions in cases like this where testimony is prefiled. What CBT is requesting is the very definition of oppressive pre-hearing procedure and constitutes harassment. There is no basis to compel attendance at a hearing to testify as to prefiled questions. In any event, much of what CBT requests is publicly available, including tariffs and annual reports filed by MCI. As for item 6 on Attachment A to the CBT application, MCI has already responded to this question when asked by the Commission - MCI has no CSAs in Kentucky.

II. CBT'S APPLICATION AND MOTION ARE NOT TIMELY.

Once MCI responded to the Commission's order, CBT was on notice that MCI did not intend to further participate in the

case. As discussed below, CBT was also on notice that participation in the case was largely voluntary.

CBT had two opportunities to raise any concerns related to discovery, but did not act. First, MCI's intentions were clear in March, when it served CBT with its response to the Commission. CBT also did not act in April, when undersigned counsel for both carriers wrote to CBT, explaining that as non-parties to the case they would not be responding to CBT's April 2 data requests or otherwise participating in the case.

With more than six weeks remaining before hearing, there was time for CBT to contact Respondents. Instead, CBT waited nearly six weeks before filing its application for subpoena and its subsequent alternative motion to compel. CBT makes no attempt to explain to the Commission why it brought its motion only days before the hearing in this matter.

IV. CBT'S MOTION MUST FAIL IN LIGHT OF CBT'S EARLIER FILING FOR BROADWING.

As discussed in detail in a joint opposition to CBT's motion filed by NuVox Communications and Time Warner Telecom, weeks before sending data requests CBT's counsel had notified the Commission that Broadwing Telecommunications, Inc. ("Broadwing") "wishes to be relieved of any obligation to provide written responses to any requests for information

presented by the Commission or other parties, to provide testimony, or to otherwise participate in the proceeding." Apparently, when representing Broadwing, CBT's counsel reads the Commission's orders the same way as counsel for numerous other competitive carriers who have chosen not to participate in the proceeding. CBT should be bound by its prior action. To put it another way, CBT cannot have its cake and eat it too.

V. IF THE PSC GRANTS CBT'S REQUESTS IT MUST REISSUE NOTICE, IDENTIFY PARTIES AND PROVIDE A NEW PROCEDURAL SCHEDULE.

Respondents are unaware of any basis for a party to compel participation and obtain discovery from non-parties in a case where participation was entirely optional. Should the PSC determine to grant this extraordinary relief to CBT, it will have to allow time for all new parties to prepare. This would require the Commission to cancel next week's hearing, re-issue notice of the proceeding with more specific guidance as to the issues and indispensable parties, and issue a new procedural schedule.

VI. CONCLUSION.

For the reasons discussed herein CBT's motion and application should be denied.

Respectfully submitted,

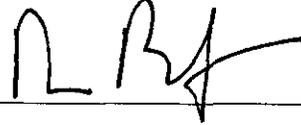


Kennard Woods
Senior Attorney
MCI Telecommunications
Six Concourse Parkway
Suite 600
Atlanta, GA 30328

C. Kent Hatfield
Douglas F. Brent
MIDDLETON REUTLINGER
2500 Brown & Williamson Tower
Louisville, Kentucky 40202

CERTIFICATE OF SERVICE

A copy of the foregoing was served this 10th day of June, 2003 first class, United States mail, postage prepaid, upon those persons listed on the attached service list.

A handwritten signature in black ink, appearing to be 'RBA', is written above a horizontal line.

SERVICE LIST - PSC 2002-00456

Sylvia Anderson
AT&T Communications of the South Central
South Central States
1200 Peachtree Street, N.E.
Suite 8100
Atlanta, GA 30309

Scott Beer
ICG Telecom Group, Inc.
161 Inverness Drive West
Englewood, CO 80012

Kennard Woods
MCIMetro Access Transmission Services,
Inc.
6 Concourse Parkway, Suite 3200
Alpharetta, GA 30328

Robert A. Bye
Cinergy Communications Co.
8829 Bond Street
Overland Park, KS 66214

Hon. Ann Louise Chevront
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601

W. A. Gillum
Mountain Telephone Cooperative, Inc.
405 Main Street
P. O. Box 399
West Liberty, KY 41472-0399

Stephen R. Byars
ALLTEL Kentucky, Inc.
P. O. Box 1650
Lexington, KY 40588-1650

James Campbell
Gearheart Communications Co.
dibla Coalfields Telephone Co.
5 Laynesville Road
Harold, KY 41635

Dr. Bob Davis
113 Pebble Beach
Georgetown, KY 40324

William K. Grigsby
Thacker-Grigsby Telephone Co.
9500 Communications Lane
P. O. Box 789
Hindman, KY 41822

Hon. William R. Atkinson
Sprint Communications Co.
3065 Cumberland Blvd.
Mailstop GAATLDO602
Atlanta, GA 30339

Trevor Ft Bonnstetter
West Kentucky Rural Telephone
237 N. 8th Street
P. O. Box 649
Mayfield, KY 42066-0649

Keith Gabbard
Peoples Rural Telephone
P. O. Box 159
McKee, KY 40447

James Hamby
Highland Telephone Coop., Inc.
P.O. Box 119
7840 Morgan County Highway
Sunbright, TN 37872

Jeff Handley
TDS - Telecom South East Division
9737 Cogdill Road, Suite 230
Knoxville, TN 37932-3374

William W. Magruder
Duo County Telephone
1021 W. Cumberland Avenue
P.O. Box 80
Jamestown, KY 42629

Hon. James R. Newberry, Jr.
Wyatt, Tarrant & Combs, LLP
Lexington Financial Center
250 W. Main Street, Suite 1700
Lexington, KY 40507

Thomas E. Preston
Foothills Rural Telephone
1621 Kentucky Route 40W
Staffordsville, KY 41256

Mark Romito
Cincinnati Bell Telephone Col.
201 E. 4th Street
P. O. Box 2301
Cincinnati, OH 4520 1-2301

David Sandidge
Electric and Water Plant Board
of the City of Frankfort
317 W. 2nd Street
Frankfort, KY 40601

John Powell
Computer Innovations
P. O. Box 539
Richmond, KY 40476

Hon. W. Brent Rice
Hon. David A. Cohen
McBrayer, McGinnis, Leslie &
Kirkland,
201 E. Main Street, Suite 1000
Lexington, KY 40507

Hon. Robert A. Bowman
Hobson & Bowman
222 West Main Street
Frankfort, KY 40601

F. Thomas Rowland
North Central Telephone
872 Highway 52 Bypass
P.O. Box 70
Lafayette, TN 37083-0070

Hon. John N. Hughes
124 W. Todd St.
Frankfort, KY 40601

John A. Powell
AEEP, Inc.
205 S. 3rd Street
Richmond, KY 40475

Hon. Thomas A. Marshall
212 Washington Street
P.O. Box 223
Frankfort, KY 40601

Darrell Maynard
Southeast Telephone, Inc.
106 Power Drive
P.O. Box 1001
Pikeville, KY 41502-1001

Stephen R. Byars
VP External Affairs
Kentucky Alltel, Inc.
P.O. Box 1650
Lexington, KY 40588-1650

Clinton Quenzer
Logan Telephone
P.O. Box 97
107 Bowling Green Road
Auburn, KY 42206

Hon. Katherine K. Yunker
Yunker & Assoc.
P.O. Box 21784
Lexington, KY 40522-1784

Robin H. Taylor
BellSouth BSE, Inc.
400 Perimeter Center Terrace
North Terraces Bldg.. Suite 220
Atlanta, GA 30346

Craig Winstead
SPIS.net
P. O.Box 1250
Dulin Street
Madisonville, KY 42431

J. D. Tobin, Jr.
Allison T. Willoughby
Brandenburg Telephone Co.
200 Telco Road
P. O Box 599
Brandenburg, KY 40108

Ms. Joan A. Coleman
Director - Regulatory
BellSouth Telecommunications
601 W. Chestnut St., 4NE
Louisville, KY 40232

John Schmoldt
Director of Operations
Gearheart Communications Co., Inc.
d/b/a Coalfields Telephone Co
5 Laynseville Road
Harold, KY 41653

Hon. David C. Olson
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth St.
Cincinnati, OH 45202-4182

Hon. Henry Walker
Boult, Cummings, Connors
& Berry, PLC
P.O. Box 198062
414 Union St., Suite 1600
Nashville, TN 37219

Harlon E. Parker
Ballard Rural Telephone
159 W 2nd. Street
P.O. Box 209
LaCenter, KY 42056-0209

Daryl Wyatt
South Central Telecom, LLC
1399 Happy Valley Road
P.O. Drawer 159
Glasgow, KY 42141-0159

A. D. Wright
e-Tel, LLC
607 Broadway
Paducah, KY 42001

Hon. Dorothy J. Chambers
General Counsel/Kentucky
BellSouth Telecommunications
601 W. Chestnut St., 4NE
P.O. Box 32410
Louisville, KY 40232

Edward H. Hancock
Assistant Superintendent
The Electric and Water Plant
of the City of Frankfort
220 Steele St.
Frankfort, KY 40601

Hon. Ann Jouett Kinney
Cincinnati Bell Telephone Co.
201 E. Fourth St.
P.O. Box 2301
Cincinnati, OH 45201-2301

Carroll Wallace
AT&T State Regulatory Manager
Boult, Cummings, Connors
& Berry, PLC
P.O. Box 198062
414 Union St., Suite 1600
Nashville, TN 37219